

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-214162.2**DATE:** March 20, 1984**MATTER OF:** Aurora Spectrum International--
Reconsideration**DIGEST:**

Prior decision dismissing protest as untimely is affirmed on reconsideration where the protester failed to file protest against agency failure to furnish copy of solicitation, the existence of which was published in the Commerce Business Daily, within 10 days after the initial closing date or extension thereof.

Aurora Spectrum International (Aurora) requests reconsideration of our decision in Aurora Spectrum International, B-214162, February 13, 1984, 84-1 CPD ___, which dismissed as untimely Aurora's protest of its nonreceipt of an Army request for proposals (RFP) No. DAAK-10-83-R-0225.

We counted the time for filing of Aurora's protest from the initial closing date of September 30, 1983, which was announced in the Commerce Business Daily (CBD). Following the announcement in the CBD, Aurora reports that the Army issued amendments to the RFP which established new closing dates. Aurora contends that this action operated to also extend Aurora's deadline for filing its protest. Aurora argues that its protest, filed on January 16, 1984, is timely because it was filed prior to February 7, 1984, the most recent of the subsequently established closing dates. Aurora also contends that, since the Defense Acquisition Regulation (DAR) §§ 2-208 (Defense Acquisition Circular (DAC) No. 76-25, October 31, 1980) and 3-505 (DAC No. 76-20, September 17, 1979) do not set out our timeliness rules and in fact provide that amendments issued should allow time for prospective offerors to consider the amendment in submitting or modifying their proposals, it is appropriate that GAO consider Aurora's protest on the merits.

Our Bid Protest Procedures require that protesters file their protests with either GAO or the contracting agency within 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2 (1983). Because of the announcement of the closing date in the CBD, Aurora had constructive knowledge of the

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Army's failure to furnish it with a copy of the RFP on September 30, 1983, when the initial closing date arrived and Aurora had not received a copy of the RFP.

The Army advises that the first amendment was issued on September 23, 1983, and that it extended the closing date for receipt of initial proposals to October 14, 1983. Eight proposals were received on October 14, 1983, and a competitive range determination narrowed the field of acceptable offers to five. The second amendment, contrary to Aurora's contention, was only issued to the five offerors within the competitive range and did not extend the date for submission of initial proposals. Therefore, even if the time for filing of Aurora's protest is counted from the subsequently extended closing date for receipt of initial proposals, October 14, 1983, it was still untimely filed on January 16, 1984, under the above rule.

Accordingly, our prior decision is affirmed.

for *Milton J. Bowler*
Comptroller General
of the United States